



US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: April 6, 2000

SECTION: 404-Clean Water Act

REFER TO: GP/LOP-98-WI-MMW

ISSUANCE AND IMPLEMENTATION OF GP/LOP-98-WI AND SUSPENSION OF ALL DEPARTMENT OF THE ARMY SECTION 404 NATIONWIDE PERMITS IN WISCONSIN EXCEPT WITHIN THE EXTERIOR BOUNDARIES OF INDIAN RESERVATIONS.

1. PURPOSE OF THIS PUBLIC NOTICE.

The purpose of this public notice is to inform the public that the actions described in the heading above will be effective on **April 17, 2000.**

2. BACKGROUND.

On July 22, 1998, and August 9, 1999, the St. Paul District issued public notices that described and requested public comment on its proposal (GP/LOP-98-WI) to replace all of the Department of the Army Section 404 nationwide permits (NWPs) in Wisconsin, except within the exterior boundaries of Indian Reservations. The Corps Division Engineer, Mississippi Valley Division, has exercised his authority to suspend the Corps Section 404 nationwide permits as proposed by the St. Paul District and GP/LOP-98-WI has been approved. The Section 404 NWPs will be suspended and replaced by GP/LOP-98-WI in Wisconsin on April 17, 2000. A copy of GP/LOP-98-WI is attached and is posted on the District's Internet web site at the address below. The GP/LOP-98 version for Minnesota (GP/LOP-98-MN) was implemented on January 24, 2000; the version for Indian Reservations (GP/LOP-98-R) was implemented on February 28, 2000. GP/LOP-98-R applies to all Federally-designated Indian Reservations in Minnesota and Wisconsin except the Mole Lake Reservation in Wisconsin.

In summary, GP/LOP-98-WI provides general permit (GP) authorization procedures for certain minor activities that are authorized without any requirement to apply to or contact the Corps, provided that the activities are conducted in compliance with all GP/LOP-98-WI conditions. GP/LOP-98-WI also provides other GPs and abbreviated Section 404 letter-of-permission (LOP) evaluation procedures for almost all activities that would impact

less than two acres of water/wetland area. A one-page matrix summary of GP/LOP-98-WI is included with the attached permit. The permit contains the complete details, descriptions, and conditions of GP/LOP-98-WI.

3. ADDITIONAL INFORMATION.

As provided in the "grandfather provision" of the attached GP/LOP-98-WI permit, commenced activities authorized under the Section 404 NWP prior to April 17, 2000, and activities the District confirmed in writing to be authorized under the Section 404 NWP before that date will remain authorized until April 17, 2002. Permit applications or project notifications concerning activities in Wisconsin that are eligible for authorization under a Section 404 NWP will continue to be considered under the Section 404 NWP until April 17, 2000. Any such applications or notifications for work in Wisconsin that are pending NWP confirmation by the District on that date will be subject to GP/LOP-98-WI.

GP/LOP-98-WI does not affect any existing or future Department of the Army Section 10 NWP, or any other regional GP in Wisconsin.

Compensatory mitigation is required by many Department of the Army Section 404 permits, including some authorizations that will be granted under GP/LOP-98-WI. Under present St. Paul District and U.S. Environmental Protection Agency, Chicago Region, policy for Wisconsin compensatory mitigation is generally required at a 1.5:1 ratio (mitigation area to impacted area) on an acreage basis. The District may deviate from this general guideline on a case-by-case basis when it determines that it is appropriate to do so.

GP/LOP-98-WI may be viewed on the District Internet web site at: <http://www.mvp.usace.army.mil> under the "Permits" section.

Notices of certain GP/LOP-98-WI permit applications will also be posted on the District web site for public and interagency review. Questions may be submitted through the web site or mailed to: Regulatory Branch, St. Paul District, Corps of Engineers, Army Corps of Engineers Centre, 190 Fifth Street East, St. Paul, Minnesota, 55101-1638.

_____/s/_____
Kenneth S. Kasprisin
Colonel, Corps of Engineers
District Engineer

ST. PAUL DISTRICT - CORPS OF ENGINEERS

GP/LOP-98-WI - Section 404 Activities in Wisconsin. THIS IS A SUMMARY - REFER TO THE PERMIT FOR COMPLETE INFORMATION. 22 March 2000

Activities not covered →	THE FOLLOWING DISCHARGES ARE NOT COVERED BY ANY PROVISION OF GP/LOP-98-WI. Discharges of dredged/fill material into calcareous fens and wetlands within 300 feet of calcareous fens; or into Federal Wild and Scenic Rivers; or that are part of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin; or in the City or Superior, Wisconsin and subject to the "Superior SAMP" (Corps permits 199606788 through 199606792). In the Pleasant Prairie, Wisconsin area as identified in Corps permit 198700323 only discharges for bank stabilization, limited to one cubic yard per running foot, are eligible for authorization under GP/LOP-98-WI.
1. 404 GP NON-RE-PORTING	<ul style="list-style-type: none"> • COVERS, in accordance with the detailed activity descriptions and conditions in the permit, discharges of dredged/fill material <u>for a single and complete project</u> for: maintenance of existing structures/fills; fish/wildlife harvesting; scientific measuring devices; survey activities; outfall structures; oil/hazardous substance spill containment/cleanup; removal of vessels wetland/riparian restoration and creation by a government agency (except conversion of sedge meadow wetland); moist soil mgmt for wildlife; maintenance of existing flood control projects; and emergency watershed protection/rehabilitation. Discharges for bank stabilization and boat ramp activities that are regulated and approved by the WDNR under Chapter 30/31 are also covered by this non-reporting GP, subject to the limitations and conditions described in the permit. • NOT COVERED: Any activity (except oil/hazardous material spill confinement/cleanup, and wetland/riparian restoration and creation by a government agency) in: <ul style="list-style-type: none"> * Coastal wetlands identified as ridge and swale complexes and wetlands adjacent to the Mink River in Door County or the Kakagon and Bad Rivers in Ashland County. Activities in these areas may be eligible for evaluation under a GP or LOP below, but the project proponent must also obtain an individual consistency determination from the Wisconsin Coastal Management Program. • NO CORPS APPLICATION OR NOTIFICATION IS REQUIRED UNDER THIS GP: Project proponents may proceed with the described activity after very carefully making sure that the work will meet all applicable terms and conditions of GP/LOP-98-WI. Applicants should consult with the WDNR concerning state permit requirements.
2. 404 GP PROVISIONAL	<ul style="list-style-type: none"> • COVERS, in accordance with the detailed activity descriptions and conditions in the permit, activities in the areas described as not covered under the non-reporting 404 GP above, and discharges of dredged/fill material for: USCG-approved bridge projects; return water from contained upland disposal sites; hydropower projects; cleanup of toxic waste; completed enforcement actions; temporary access/dewatering for construction; utility lines; structural discharges; and, other discharges that impact not more than 1/10 (one-tenth) of an acre of water/wetland area for industrial/commercial/residential/agricultural/public development projects. Discharges to provide access to waterbodies are NOT included. • APPLICATION AND EVALUATION PROCEDURES: <ul style="list-style-type: none"> * Application submitted to COE on joint Federal-State form, COE determines eligibility of proposal for GP. * COE conducts endangered species, cultural resources and trust responsibility reviews. * COE sends provisional GP letter, For projects found to be in compliance with Federal endangered species and cultural resource requirements, to applicant (copy to WDNR) advising that GP authorization is PROVISIONAL upon applicant receiving confirmation of 401 certification from WDNR
3. 404 LOP PROVISIONAL	<ul style="list-style-type: none"> • COVERS, in accordance with all descriptions and conditions in the permit, activities not authorized otherwise under GP/LOP-98-WI, up to 2 acres of total water/wetland impact (5 acres for WDOT transportation projects that are subject to the WDNR-WDOT Cooperative Agreement liaison procedures and projects to maintain/upgrade existing public roads). • APPLICATION AND EVALUATION PROCEDURES: <ul style="list-style-type: none"> * Application submitted to COE on joint Federal-State form. COE determines eligibility of project for LOP. COE sends copy to WDNR. * COE conducts cultural resources, endangered species and trust responsibility reviews. * COE conducts 30-day public/interagency coordination for projects having impacts over 10,000 square feet. * COE determines if LOP should be issued or denied (REVIEW CRITERIA: work complies with Sec. 404 (b)(1) guidelines and is not contrary to the public interest). * If decision is to issue, COE sends letter to applicant (copy to WDNR) advising that LOP is PROVISIONAL upon applicant receiving confirmation of 401 certification from WDNR. [NOTE - WDOT transportation projects that are subject to WDNR-WDOT coordination procedures and have been granted Section 401 certification by the WDNR may be authorized under this LOP on a non-provisional basis]. • COMPENSATORY MITIGATION - required for all adverse wetland-water fill/drainage/inundation impacts if those impacts exceed 10,000 square feet.
4. 404 GP PROGRAMMATIC	<ul style="list-style-type: none"> • COVERS, in accordance with the detailed activity descriptions and conditions in the permit, Section 404 activities that are regulated by the WDNR under CH. 30/31, (<i>may be combined with a GP or LOP above, not to exceed 2 acres total impact for any single project</i>) • APPLICATION AND EVALUATION PROCEDURES: <ul style="list-style-type: none"> * Application submitted to WDNR on joint Federal-State form. WDNR provides copy of permit application to COE. COE determines eligibility of project for GP. * COE conducts cultural resources, endangered species and trust responsibility reviews. * COE conducts 30-day public/interagency coordination for projects having impacts over 10,000 square feet. * COE confirms GP and sends confirmation letter to applicant with a copy to WDNR. * COE GP authorization is valid when WDNR permit is granted.

DEPARTMENT OF THE ARMY PERMIT

Permittee: The General Public in Wisconsin

Permit No. GP/LOP-98-WI

St. Paul District
Issuing Office: U.S. Army Corps of Engineers

Issuance Date: **APRIL 17, 2000**

Expiration Date: **APRIL 16, 2005**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

GENERAL PERMIT AUTHORIZATIONS: The general public in the State of Wisconsin is authorized to perform work in accordance with the terms and conditions of the general permits (GPs) specified below, after satisfying all applicable permit terms and conditions.

IMPLEMENTATION OF SECTION 404 LETTER OF PERMISSION PROCEDURES:
Effective upon the issuance date above, the general public in the State of Wisconsin may request Section 404 authorization from the St. Paul District under the Section 404 Letter of Permission (LOP) procedures specified herein.

IMPORTANT: Some GP/LOP-98-WI authorizations are provisional or programmatic and require that project proponents obtain a permit or state water quality certification from the Wisconsin Department of Natural Resources before any work is authorized. GP/LOP-98-WI authorizations are subject to all applicable terms and conditions specified in this permit. In addition, some GP or LOP authorizations may be subject to project-specific special conditions which will be specified in the St. Paul District's letter of authorization. Refer to the appropriate sections of this permit for a description of GP and LOP procedures, eligible activities, conditions, exclusions and application instructions.

PROJECT DESCRIPTION AND LOCATION: GP/LOP-98-WI applies to certain

discharges of dredged and/or fill material into waters of the United States, including wetlands, as described herein, in the State of Wisconsin except within the exterior boundaries of Indian Reservations.

Department of the Army General Conditions (applicable to all GP/LOP-98-WI authorizations):

1. The time limit for completing work authorized by the non-reporting GP provisions of GP/LOP-98-WI ends upon the expiration date of GP/LOP-98-WI. The time limit for completing all other work authorized by GP/LOP-98-WI ends upon the expiration date of GP/LOP-98-WI or two years after the date of the Corps authorization of the work under GP/LOP-98-WI, whichever occurs later.
2. You must maintain the activity authorized by GP/LOP-98-WI in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain an activity authorized under other than the non-reporting GP provisions of GP/LOP-98-WI, or should you desire to abandon it without a good faith transfer, you must obtain a modification of the permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing any activity authorized by GP/LOP-98-WI, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. You must allow representatives from this office or the Wisconsin Department of Natural Resources to inspect the proposed project site and to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of GP/LOP-98-WI.
5. Refer to the other GP/LOP-98-WI terms and conditions specified below.

Further Information:

1. Congressional Authorities: You have been authorized to

undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. GP/LOP-98-WI does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. GP/LOP-98-WI does not grant any property rights or exclusive privileges.

c. GP/LOP-98-WI does not authorize any injury to the property or rights of others.

d. GP/LOP-98-WI does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

/s/

(DATE)

Kenneth S. Kasprisin
Colonel, Corps of Engineers
District Engineer

GP-LOP-98-WI TERMS AND PROCEDURES

This describes the Section 404 general permit and Section 404 letter of permission authorization procedures implemented by the St. Paul District in GP/LOP-98-WI.

Persons proposing to do work should especially note that, in ALL cases, GP/LOP-98-WI requires that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical. Also, activities that would adversely affect Federal or State endangered plant or animal species or certain cultural or archaeological resources, or that would impair reserved Native American tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights, are not eligible for authorization under GP/LOP-98-WI.

1. NON-REPORTING GP.

The following discharges, for a single and complete project, that comply with all terms and conditions of GP/LOP-98-WI are authorized by this GP. **No Corps application or notification is required under this GP. Project proponents may proceed with the described discharges after very carefully making sure that the work will meet all applicable terms and conditions of GP/LOP-98-WI.** Certain activities, as noted below, are authorized under the non-reporting GP only if they are regulated and approved by the WDNR. Applicants for all activities should consult with the WDNR and local governments concerning state and local permit requirements.

Note the areas and activities that are EXCLUDED from this non-reporting GP by the non-reporting GP EXCLUSIONS that follow these activity descriptions.

a. ACTIVITIES ELIGIBLE FOR AUTHORIZATION BY THE NON-REPORTING GP:

1. Maintenance activities. Discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original authorization or most recently authorized modification. Minor deviations are allowed where necessary to conform to modern construction practices, materials, construction codes, or safety standards. Activities above the plane of the ordinary high water mark to maintain residential retaining walls that are adjacent to state navigable waters, maintenance dredging and beach restoration are not authorized by this GP.

2. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Section 404 discharges for fish and wildlife harvesting devices and activities such as pound nets, crayfish/minnow traps, duck blinds, clam digging; and small fish attraction devices. This GP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species.

3. Scientific Measurement Devices. Section 404 discharges for staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided there is no discharge of unconfined fill or dredged material into waters of the U.S.

4. Survey Activities. Section 404 discharges for survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this GP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this GP. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act.

5. Outfall Structures. Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or which are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act). This GP only authorizes those intake structures that are directly associated with an authorized outfall structure.

6. Oil/Hazardous Substances Containment/Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action

7. Removal of Vessels. Minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This GP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer determines that the work would be done in compliance with the "Historic Properties" general condition. This GP does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA (see 40 CFR 229.3).

8. Stream and Wetland Restoration Activities. This GP does not cover any conversion of sedge meadow wetland to other wetland types. It covers Section 404 activities in waters of the United States associated with the restoration and enhancement of wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of non-Section 10 streams and open water areas; (i) on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (ii) on any Federal land. (The future reversion discussed below does not apply to streams or wetlands created, restored or enhanced as mitigation for a mitigation bank.); or (iii) by a state agency on any public or private land. This GP cannot be used to authorize activities for the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This GP cannot be used to channelize a stream and does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this GP may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. For example, this GP may authorize the creation of an open water impoundment in an emergent wetland, provided the emergent wetland is replaced by creating that wetland type in the adjacent uplands. Reversion: For enhancement, restoration and creation projects conducted under paragraphs (ii) and (iii), this GP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit at that time would be required for any reversion. For restoration, enhancement and creation projects conducted under paragraph (i), this GP also authorizes

any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this authorization expires. The five year reversion limit does not apply to agreements without time limits reached under paragraph (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. Because projects that would be authorized by this permit are designed to enhance the aquatic environment, mitigation will not be required for the work.

9. Moist Soil Management for Wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally/tribal-owned or managed and state-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This GP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This GP does not authorize converting wetlands to uplands, impoundments or other open water bodies.

10. Emergency Watershed Protection -Rehabilitation. Work done by or funded by the Natural Resource Conservation Service qualifying as an "exigency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR Part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13).

11. Bank Stabilization. **This activity is authorized under the non-reporting GP provided that the work is**

regulated and approved by the Wisconsin Department of Natural Resources (WDNR) under Chapter 30/31 Wisconsin State Statutes. Otherwise, it may be eligible for authorization under a GP or LOP below. Discharges of dredged or fill material for bank stabilization activities necessary for erosion prevention provided that no material is placed in wetlands and the bank stabilization activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark. (Bank stabilization projects that exceed one cubic yard per running foot may be eligible for authorization under a GP or LOP below).

12. Boat Ramps. This activity is authorized under the non-reporting GP provided that the work is regulated and approved by the WDNR under Chapter 30/31 Wisconsin State Statutes. Otherwise, it may be eligible for authorization under a GP or LOP below. Discharges required for the construction of boat ramps provided the discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone, or gravel into forms, or placement of pre-cast concrete planks or slabs (unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized); the boat ramp does not exceed 20 feet in width; the base material is crushed stone, gravel or other suitable material; the excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and no material is placed in special aquatic sites, including wetlands. Dredging to provide access to the boat ramp may be authorized by another general permit, LOP, or individual permit pursuant to Section 10 if located in navigable waters of the United States.

b. AREAS/ACTIVITIES EXCLUDED FROM THE NON-REPORTING GP.

Diversions of water. This permit may not be used to authorize all or any portion of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin.

In the Pleasant Prairie, Wisconsin area identified in Corps permit 198700323, only discharges for bank stabilization, limited to one cubic yard per running foot, are eligible for authorization under this or any part of GP/LOP-98-WI.

Activities in the City of Superior, Wisconsin area subject to the "Superior SAMP" (Corps permits 199606788 through 199606792) are not eligible for authorization under this or any part of GP/LOP-98-WI.

Also, the non-reporting GP does not authorize any activity (except oil - hazardous material spill confinement and cleanup, and stream and wetland restoration activities by a government agency as described at 8. above in other than Federal Wild and Scenic Rivers) in:

1. Calcareous fens as identified by WDNR, and wetlands within 300 feet of such fens. All regulated activities in these areas require evaluation under Corps standard individual permit procedures.
2. Federal and State Wild and/or Scenic Rivers. All regulated activities in these rivers, including stream and wetland restoration activities by a government agency, require evaluation under Corps standard individual permit procedures.
3. Coastal wetlands in ridge and swale complexes as identified on WDNR maps, and wetlands adjacent to the Mink River in Door County or the Kakagon and Bad Rivers in Ashland County.

NOTE: Unless otherwise noted, activities excluded above may be eligible for authorization under a GP or LOP below.

c. APPLICATION/EVALUATION PROCEDURES UNDER THE NON-REPORTING GP:

An activity authorized by this GP may commence when project proponents have carefully confirmed that the activity will be conducted in compliance with all of the terms and conditions of GP/LOP-98-WI. No application to the Corps is required; however, if requested, the Corps will confirm whether or not proposed work is authorized by the GP. Persons proposing to do work should note that conditions of the GP require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical. Activities that would adversely affect Federal or State endangered plant or animal species or certain cultural/archaeological resources are not authorized by GP/LOP-98-WI. Information about Federal and State endangered species may be obtained by contacting the U. S. Fish and Wildlife Service at (920) 465-7440 or the WDNR at (608) 266-7012. The District's WWW site will also contain a link to the U.S. Fish and Wildlife Service list of Federal and State endangered Species for each Wisconsin county. Information concerning cultural resources may be obtained by contacting the State Historic Preservation Office at (608) 264-6505. Project proponents are encouraged to contact these agencies early in project planning because doing so can help avoid violations of Federal law and potentially lengthy project delays.

Persons performing work should be aware that Federal or State regulations concerning endangered species and cultural resources may apply to their projects whether or not the work requires a Corps permit.

2. PROVISIONAL GP.

The following discharge activities, for a single and complete project, that comply with all terms and conditions of GP/LOP-98-WI are eligible for authorization by this GP. **Persons proposing to do work should note that conditions of GP/LOP-98-WI require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical.**

Note that certain areas and activities are EXCLUDED from this GP by the PROVISIONAL GP EXCLUSIONS that follow these activity descriptions.

a. ACTIVITIES ELIGIBLE FOR AUTHORIZATION BY THE PROVISIONAL GP:

1. Activities excluded from authorization by the non-reporting GP because they are in a coastal wetland area described at 1.b.3 . above.

2. U.S. Coast Guard Approved State or Federally Funded Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeway and approach fills are not included.

3. Return Water From Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area. The dredging itself requires a Section 10 permit if located in navigable waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. Authorization under this GP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the State through the Section 401 certification procedures.

4. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity

of not more than 5000 KW; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

5. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. For discharges in special aquatic sites, including wetlands, the application must include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this GP. This GP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

6. Completed Enforcement Actions. Discharges of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with the terms of a final written Corps non-judicial settlement agreement resolving a Section 404 violation or the terms of an EPA 309(a) order or consent resolving a violation of Section 404 of the CWA or the terms of a state settlement agreement or order resolving a violation of Sections 281.15 and 283.001, Wisconsin Statutes and NR 299, Wis. Adm. Code and that require Section 404 authorization from the Corps of Engineers. This GP covers only those discharges not authorized under EPA's statutory authority under Section 309(a) of the Clean Water Act and only those discharges where the WDNR has granted State water quality certification and is limited to cases involving water/wetland impacts of 5 acres or less.

7. Temporary Construction, Access and Dewatering. Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the Corps of Engineers or the U.S. Coast Guard, or for bridge construction activities not subject to Federal regulation. Appropriate measures must be taken to maintain near-normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Temporary fill must be entirely removed to upland areas following completion of the construction activity and the affected areas restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place

after cofferdams are removed require a Section 10 permit if located in navigable waters of the United States. (See 33 CFR Part 322). The application for this GP must include a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure that adverse environmental impacts are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable). This GP does not authorize temporary structures or fill associated with mining activities or the construction of marina basins which have not been authorized by the Corps.

8. Structural Discharges. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member such as a utility pole, bridge support, ramp surface, or retaining wall. This activity does not include building foundations or other structures such as pilings intended for use as building supports.

9. Utility Line Discharges. Discharges of dredged or fill material associated with excavation, backfilling or bedding for utility lines, including associated outfall and intake structures, provided that there is no change in preconstruction contours and the utility line project does not cause any wetland drainage. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The term "utility line" does not include structures or activities which may drain wetlands. In wetlands, the top 6 to 12 inches of the trench should be backfilled with topsoil from the trench. Excess material must be removed to upland areas. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line project.

10. Commercial, Residential, Industrial, Agricultural and Public Development (including roads for these purposes). Discharges of dredged or fill material for a single and complete project that directly and/or indirectly impact by filling, draining, excavating and/or inundating not more than 1/10 (one-tenth) of an acre of wetland/water area for commercial, residential, or industrial development projects, including associated roads. This provisional GP does NOT include access paths across water or wetland areas to provide upland access to a waterbody for any purpose. It is important for applicants for this GP to include information with their application that clearly shows that the proposed work is

the least environmentally damaging way that is practical to accomplish the purpose of the project. This will minimize delays in Federal and State evaluation procedures and increase the chance that the project will receive prompt and favorable review.

b. AREAS/ACTIVITIES EXCLUDED FROM THE PROVISIONAL GP.

Diversions of Water. This GP may not be used to authorize all or any portion of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin.

Listed impaired waters. This GP may not be used to authorize projects that involve filling, draining, or inundating more than one acre of wetland/water in waterbodies, and adjacent wetlands, that are listed on the EPA-approved list of Wisconsin impaired waters pursuant to Section 303(d) of the Clean Water Act. This exclusion applies only to those impaired waters that are listed for one or more of the following reasons: nutrients, dissolved oxygen (DO), ammonia, suspended solids, turbidity, sediment, streambank erosion, flow habitat, hydrological modification, and wetland loss. Such projects in these areas may be eligible for evaluation under the provisional LOP of GP/LOP-98-WI.

In the Pleasant Prairie, Wisconsin area identified in Corps permit 198700323, only discharges for bank stabilization, limited to one cubic yard per running foot, are eligible for authorization under this or any part of GP/LOP-98-WI.

Activities in the City of Superior, Wisconsin area subject to the "Superior SAMP" (Corps permits 199606788 through 199606792) are not eligible for authorization under this or any part of GP/LOP-98-WI.

Also, the provisional GP does not authorize any activity in:

1. Calcareous fens as identified by the WDNR, and wetlands within 300 feet of such fens. All regulated activities in these areas require evaluation under Corps individual permit procedures.

2. Federal and State Wild and/or Scenic Rivers (all regulated activities in these rivers require evaluation under Corps individual permit procedures).

c. APPLICATION/EVALUATION PROCEDURES UNDER THE PROVISIONAL GP:

Applicants must submit a complete application to the St.

Paul District of the Corps of Engineers using the joint state-Federal application form that is available from District and WDNR offices. Upon receipt of a permit application, the District will promptly provide a copy of the application to the WDNR and commence to review the proposed activity to determine eligibility for the provisional GP. In some cases, the District may require a **wetland delineation** prepared in accordance with the 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL before the application will be considered complete. The applicant may ask the Corps to prepare the delineation; however, applicants are encouraged to obtain the services of professional consultants to avoid delays. The District will complete its review as noted below and send the applicant a letter advising of the outcome. If the District decision is to issue a provisional GP, the District letter to the applicant will be a provisional GP confirmation letter. The District will simultaneously send a copy of the letter to the WDNR.

ENDANGERED SPECIES AND CULTURAL RESOURCES REVIEW.

The St. Paul District review will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Projects found not to comply with either or both of these Acts will not be authorized under the GP or any other Corps permit authorization until actions are taken so that compliance with both Acts is assured. The District Federal endangered species review will consist of District staff consulting appropriate reference materials including endangered species information published by the U.S. Fish and Wildlife Service (USFWS) in informational brochures and on Internet World Wide Web pages and any other available data, information or specific guidance provided by USFWS. District staff will be aware of locations where endangered species are known or likely to be present and of the types of activities that may affect those species. District staff will directly consult with USFWS staff concerning proposals which appear to have potential to affect listed species. The review will include District and/or USFWS site inspections of specific project sites, and/or formal Section 7 interagency consultation where necessary. In addition, during the Federal review of provisional GP applications, District staff will consult state endangered species information made available by the WDNR. District staff will consult with WDNR staff concerning proposals that appear to have potential to affect state listed species.

The District Federal cultural resources review will be conducted in a manner similar to the endangered species review. The National Register of Historic Places

will be consulted to determine the presence or absence of known cultural resources. District regulatory staff will be aware of areas that have a high probability to contain important cultural resources and will consult District cultural resource staff concerning questionable projects. District regulatory or cultural resource staff will consult with the State Historic Preservation Officer on appropriate projects. Cultural resource surveys and/or formal consultation with the President's Advisory Council on Historic Preservation will be conducted where necessary.

Work is authorized under the provisional GP when the project proponent receives both a provisional GP confirmation letter from the St. Paul District AND confirmation from the WDNR that State water quality certification has been granted or waived for the project. Also note Standard Condition 29. concerning the need for Wisconsin Coastal Management Program certification for activities in coastal wetlands in ridge and swale complexes as identified on WDNR maps, and wetlands adjacent to the Mink River in Door County or the Kakagon and Bad Rivers in Ashland County.

3. PROVISIONAL LOP.

The following discharges for a single and complete project that comply with all terms and conditions of GP/LOP-98-WI are eligible for authorization by this LOP, unless excluded below. Projects that impact more than 10,000 square feet of water/wetland area require compensatory mitigation in accordance with Federal guidelines.

a. ACTIVITIES ELIGIBLE FOR AUTHORIZATION BY THE PROVISIONAL LOP:

1. All discharge activities that impact less than 2 acres of wetland/water area that are not authorized under other provisions of GP/LOP-98-WI.

2. Discharges for highway projects administered by the Wisconsin Department of Transportation (WDOT), and discharges conducted by any government agency to maintain/upgrade existing public roads within established transportation corridors, that impact less than 5 acres wetland/water area and are subject to review and concurrence under the WDNR-WDOT Cooperative Agreement, or that are reviewed and approved under Trans 207, Wis. Adm. Code may be authorized under this LOP on a non-provisional basis. Compensatory mitigation is required for all WDOT-administered highway projects in accordance with the WDNR/WDOT cooperative agreement and The Wetland Mitigation Banking Technical Guideline.

b. AREAS/ACTIVITIES EXCLUDED FROM THE PROVISIONAL LOP.

Diversions of Water. This permit may not be used to authorize all or any portion of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin.

In the Pleasant Prairie, Wisconsin area identified in Corps permit 198700323, only discharges for bank stabilization, limited to one cubic yard per running foot, are eligible for authorization under this or any part of GP/LOP-98-WI.

Activities in the City of Superior, Wisconsin area subject to the "Superior SAMP" (Corps permits 199606788 through 199606792) are not eligible for authorization under this or any part of GP/LOP-98-WI.

Also, the provisional LOP does not authorize any activity in:

1. Calcareous fens as identified by the WDNR, and wetlands within 300 feet of such fens. All regulated activities in these areas require evaluation under Corps individual permit procedures.
2. Federal and State Wild and/or Scenic Rivers (all regulated activities in these rivers require evaluation under Corps individual permit procedures).

c. APPLICATION/EVALUATION PROCEDURES UNDER THE PROVISIONAL LOP:

Applicants must submit a complete application to the St. Paul District of the Corps of Engineers using the joint state-Federal application form that is available from District and WDNR offices. Upon receipt of a permit application, the District will promptly provide a copy of the application to the WDNR and commence to review the proposed activity to determine eligibility for the provisional LOP. In some cases, the District may require a **wetland delineation** prepared in accordance with the 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL before the application will be considered complete. The District will conduct its review as noted below, and send the applicant a letter advising of the outcome. If the District decision is to issue a provisional LOP, the District letter to the applicant will consist of or include a provisional LOP. The District will simultaneously send a copy of the letter to the WDNR.

The District review will include Federal endangered species and cultural resource reviews as described

under the provisional GP evaluation procedures above. In addition, during the Federal review of provisional LOP applications, District staff will consult state endangered species information made available by the WDNR. District staff will consult with WDNR staff concerning proposals that appear to have potential to affect state listed species. Information concerning state species received from WDNR or as a result of public/interagency coordination procedures will be considered in the District LOP evaluation.

The District LOP review will include a 30-day public/interagency review process, as described in the GP/LOP-98-WI PROVISIONS section below, for projects that would impact more than 10,000 square feet of wetland/water area. Comments received will be considered by the District in completing its review.

Applicants are encouraged to help speed the District evaluation and increase the chance of receiving a favorable interagency review and authorization by including information with their application that clearly shows that the proposed work is the least environmentally damaging way that is practical to accomplish the purpose of the project. The District must generally deny any request for authorization under the LOP unless the applicant demonstrates that the work proposed is the least environmentally damaging way that is practical to accomplish the project purpose, and that impacts to wetland/water areas cannot reasonably be avoided or further minimized. The District must also deny authorization for any regulated activity that it determines is contrary to the public interest.

COMPENSATORY MITIGATION.

Projects that impact more than 10,000 square feet of water/wetland area require compensatory mitigation in accordance with Federal guidelines. Applicants for this LOP should include detailed information about how they propose to provide compensatory mitigation to offset the adverse wetland impacts of the project. For many small projects, a monetary contribution to in-lieu fee mitigation or use of a mitigation bank may satisfy the compensatory mitigation requirement. Compensatory mitigation that is proposed to satisfy state or local requirements may, but will not necessarily, also satisfy the Federal requirement. Applicants are encouraged to obtain the services of professional consultants in planning projects and preparing applications, wetland determinations/delineations, and compensatory mitigation plans. The District does not endorse any consultants; however, the District maintains a list, that is available upon request, of consultants that have asked to be listed as being available for hire to perform such services.

AUTHORIZATION CRITERIA: The District will review each application for compliance with the GP/LOP-98-WI terms and conditions, conduct a public hearing if one is warranted, and complete a 404(b)(1) analysis and environmental assessment. The District will generally issue a provisional letter of permission authorizing those projects found to be in compliance with all terms and conditions of GP/LOP-98-WI and the Section 404(b)(1) guidelines, provided the District determines that the proposed work is not contrary to the public interest. The District will do the level of analysis required to determine whether or not the proposal meets all authorization criteria. Projects that fail to meet any authorization criteria will be denied authorization. The LOP will identify any compensatory mitigation requirements and any project-specific conditions deemed necessary by the District to insure that the proposed work meets the authorization criteria.

Work is authorized under the provisional LOP when the project proponent receives both a provisional LOP from the St. Paul District AND confirmation from the WDNR that State water quality certification has been granted or waived for the project. Also note Standard Condition 29. concerning the need for Wisconsin Coastal Management Program certification for activities in coastal wetlands in ridge and swale complexes as identified on WDNR maps, and wetlands adjacent to the Mink River in Door County or the Kakagon and Bad Rivers in Ashland County.

Permittees must send a COMPLIANCE CERTIFICATION to the District after the work is done as specified at paragraph 1. of the GP/LOP-98-WI STANDARD CONDITIONS ATTACHMENT.

4. PROGRAMMATIC GP.

This GP may cover discharge activities as described below, for a single and complete project, that comply with all terms and conditions of GP/LOP-98-WI, unless excluded below.

a. ACTIVITIES ELIGIBLE FOR AUTHORIZATION BY THE PROGRAMMATIC GP:

All Section 404 activities that are regulated by the WDNR under Chapter 30 and 31, Wisconsin Statutes, are eligible. This programmatic GP may be combined with a GP or LOP authorization above, for a single and complete project, not to exceed a total of 2 acres of water/wetland impact.

b. AREAS/ACTIVITIES EXCLUDED FROM THE PROGRAMMATIC GP.

Diversions of Water. This GP may not be used to

authorize all or any portion of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin.

Listed impaired waters. This GP may not be used to authorize projects that involve filling, draining, or inundating more than one acre of wetland/water in waterbodies, and adjacent wetlands, that are listed on the EPA-approved list of Wisconsin impaired waters pursuant to Section 303(d) of the Clean Water Act. This exclusion applies only to those impaired waters that are listed for one or more of the following reasons: nutrients, dissolved oxygen (DO), ammonia, suspended solids, turbidity, sediment, streambank erosion, flow habitat, hydrological modification, and wetland loss. Such projects in these areas may be eligible for evaluation under the provisional LOP of GP/LOP-98-WI.

In the Pleasant Prairie, Wisconsin area identified in Corps permit 198700323, only discharges for bank stabilization, limited to one cubic yard per running foot, are eligible for authorization under this or any part of GP/LOP-98-WI.

Activities in the City of Superior, Wisconsin area subject to the "Superior SAMP" (Corps permits 199606788 through 199606792) are not eligible for authorization under this or any part of GP/LOP-98-WI.

Also, the programmatic GP does not authorize any activity in:

1. Calcareous fens as identified by the WDNR, and wetlands within 300 feet of such fens. All regulated activities in these areas require evaluation under Corps individual permit procedures.
2. Federal and State Wild and/or Scenic Rivers (all regulated activities in these rivers require evaluation under Corps individual permit procedures).

c. APPLICATION/EVALUATION PROCEDURES UNDER THE PROGRAMMATIC GP:

Applicants must submit a complete application to the WDNR using the joint state-Federal application form that is available from District and WDNR offices. In some cases, the District may require a **wetland delineation** prepared in accordance with the 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL before the application will be considered complete. Upon receipt of a permit application, the WDNR will promptly provide a copy of the application to the St. Paul District. The District will commence to

review the proposed activity to determine the proposal's eligibility for the programmatic GP.

The Corps review will include Federal endangered species and cultural resource reviews as described under the provisional GP evaluation procedures above.

COMPENSATORY MITIGATION.

Projects that impact more than 10,000 square feet of water/wetland area require compensatory mitigation in accordance with Federal guidelines.

The Corps review will include a 30-day public/interagency review process, as described in the GP/LOP-98-WI PROVISIONS below, for projects that would impact more than 10,000 square feet of wetland/water area. Comments received will be considered in the Corps review.

AUTHORIZATION CRITERIA: The Corps will issue a programmatic GP authorizing those projects found to be in compliance with all terms and conditions of GP/LOP-98-WI and the Section 404(b)(1) guidelines, provided it is determined that the proposed work is not contrary to the public interest. The Corps will do the level of analysis required to determine whether or not the proposal meets all authorization criteria, and will consider all comments of record, including those received as a result of the public-interagency coordination procedures. The Corps may add conditions, including a requirement for compensatory mitigation, to a programmatic GP authorization. The Corps will send a copy of all programmatic GP authorization letters to the WDNR.

Work is authorized under the programmatic GP when the project proponent receives both a GP confirmation letter from the District AND state Chapter 30/31 authorization (permit) from the WDNR. Also note Standard Condition 29. concerning the need for Wisconsin Coastal Management Program certification for activities in coastal wetlands in ridge and swale complexes as identified on WDNR maps, and wetlands adjacent to the Mink River in Door County or the Kakagon and Bad Rivers in Ashland County.

GP/LOP-98-WI PROVISIONS

1. **DISCRETIONARY AUTHORITY.** The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP/LOP-98-WI based on concern for the aquatic environment or for any other public interest factor.

2. **DEFINITION OF SINGLE AND COMPLETE PROJECT.** For purposes of GP/LOP-98-WI, the term, "single and complete project" means the total project proposed by

the project proponent. For example, if construction of a residential development or linear project such as a road or utility line affects several different areas of waters of the U.S., the cumulative total of all filled areas is the basis for deciding the project's total wetland/water impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

3. PUBLIC/INTERAGENCY COORDINATION PROCESS.

For GP/LOP-98-WI applications that are subject to the public/interagency review process, the District will, within 1 to 5 work days of receipt of a complete application, publish a 30-day notice of the application on an Internet World Wide Web page that is available to the coordinating agencies and the general public. Notification of posting will also be emailed to coordinating agencies that request to receive such notice. At a minimum, the Internet notice will identify the applicant, project location and nature, approximate impacts, and any proposed/required compensatory mitigation. The notice will include a brief project description and describe how to respond to the appropriate District regulatory project manager for the activity. Coordinating agencies in Wisconsin are Indian Tribes that may be affected by the proposal, the Department of Natural Resources, the Wisconsin Coastal Zone Program, the State/Tribal Historical Preservation Officer, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The District will coordinate with Indian Tribes by use of facsimile machine in lieu of the Internet. The District will consider all comments and information received during the public/interagency review in completing its evaluation of the proposed activity.

4. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES.

Projects the District finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the Federal trust responsibility will be considered in the District's evaluation. Throughout the state, including the treaty-ceded territories, the District review of all provisional LOP and programmatic GP projects which impact more than 10,000 square feet of wetland/water area will include coordination with any potentially affected tribe(s). The District will provide, by facsimile transmission, project notifications to the concerned tribe(s) for a 30-day review period. The views of the tribe(s) will be considered in the District's evaluation of the activity and in the District's determination of whether the activity is in compliance with GP/LOP-98 Standard Condition 18. that prohibits activities, or their operation, that may impinge or abrogate treaty rights, including, but not limited to,

reserved treaty fishing and hunting rights.

5. PROJECT-SPECIFIC GP/LOP-98-WI CONDITIONS.

The District evaluation will identify any need for project-specific special conditions and require such conditions to minimize adverse project impacts and/or protect the public interest.

6. FORM AND CONFIRMATION OF AUTHORIZATION.

Every GP/LOP-98-WI authorization that requires submission of an application will be confirmed in writing by the St. Paul District sending the project proponent a letter confirming authorization. The letter will identify any required special conditions.

7. FEDERAL AND STATE ENDANGERED SPECIES AND CULTURAL RESOURCES. GP/LOP-98-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act, s. 29.604, Wisconsin Statutes and Section 106 of the National Historic Preservation Act. No Corps GP or letter of permission will be granted for projects found not to comply with these Acts.

8. GRANDFATHER PROVISION. Regulated work for commenced activities that is authorized under the nationwide permits, and for activities previously confirmed by the District in writing to be authorized under the nationwide permits, continues to be authorized under the terms of the permits that existed at the time of original confirmation of authorization for two years after the issuance date of GP/LOP-98-WI.

9. PERIODIC INTERAGENCY REVIEW. The St. Paul District will conduct an interagency review to evaluate the performance of GP/LOP-98-WI after it has been in effect for one year. The St. Paul District has authority to modify, revoke, suspend or propose any Section 404 authorization after the annual review or at any other time it determines that circumstances concerning the public interest warrant such action.

10. RECORD KEEPING. All GP/LOP-98-WI authorizations will be recorded in the District permit database for impact tracking and program evaluation.

GP/LOP-98-WI STANDARD CONDITIONS ATTACHMENT

All GP/LOP-98-WI authorizations, **including authorizations under the non-reporting GP**, are subject to the following standard conditions. These conditions must be satisfied in order for any GP/LOP-98 authorization, whether GP or LOP, to be valid:

1. Compliance Certification. Under all LOP

authorizations under GP/LOP-98-WI, the permittee must submit a report to the St. Paul District within 30 days of completion of the work. The report must identify the permittee and include the permittee's address, a description of the work that was done, the dates work was begun and completed, the location and address at which the work was done, and an identification of the waters of the U.S., including wetlands, that the work affected. The report must include a signed statement by the permittee certifying that the work was done in compliance with all terms and conditions of GP/LOP-98-WI. The District will include a certification form with its letters of authorization.

2. Case-by-case conditions. The activity must comply with any special conditions which may have been added by the District or by a state, tribe, or the U.S. Environmental Protection Agency in its section 401 water quality certification or consistency determination under the Coastal Zone Management Act. Such conditions will be specifically identified in any Corps authorization for the project.

3. Mitigation/Sequencing. Discharges of dredged or fill material into waters of the United States **must be minimized or avoided to the maximum extent practicable**, however the District may approve a compensation plan that it determines is more beneficial to the environment than minimization or avoidance measures.

4. State/Tribal Water quality certification and Coastal zone management (CZM) consistency determination. Some GP/LOP-98-WI authorizations may not be valid unless and until the WDNR has confirmed that the activity complies with state water quality certification and/or CZM consistency determination is obtained from or waived by the Wisconsin Coastal Management Program. If such a condition applies, it will be so noted in the Corps GP or LOP authorization letter for the project. See condition 28. and 29. at the end of this permit.

5. Suitable material. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

6. Proper maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

7. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below

the ordinary high water mark must be permanently stabilized at the earliest practicable date. Work should be done in accordance with state-approved published practices.

8. Removal of temporary fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

9. Federal and State threatened and endangered Species.

a. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act and/ or State law or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

b. Authorization of an activity under GP/LOP-98 does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act or State law. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service, WDNR or their world wide web pages on the Internet.

10. Historic properties, cultural resources. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic

resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

11. Spawning areas. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

12. Obstruction of high flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

13. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

14. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

15. Navigation. No activity may cause more than a minimal adverse effect on navigation.

16. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

17. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

18. Treaty rights. No activity or its operation may impinge or abrogate reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. Water quality standards. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.

20. Preventive measures. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.

21. Disposal sites. If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark), the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to the placement of any dredged material.

22. Erosion control. Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion. Cofferdams shall be constructed and maintained so as to prevent erosion into the water. If earthen material is used for coffer dam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion.

23. Suitable fill material. All fill (including riprap), if authorized under this permit, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Officer (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the St. Paul District Office.

24. Cultural resources. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

25. Water intakes/activities. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

26. Spill contingency plan. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at **1-800-943-0003** and the U.S. Coast Guard at telephone number **1-800-424-8802**.

27. Other permit requirements. No Corps GP/LOP-98-WI authorization eliminates the need for other local, state or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

28. State Section 401 Certification Conditions. The WDNR has conditionally granted Section 401 certification for GP/LOP-98-WI. Federal regulations require that conditions of state Section 401 water quality certification become conditions of Section 404 authorizations. Therefore, the conditions of the state certification below are incorporated as conditions of GP/LOP-98-MN.

STATE CONDITIONS AND LIMITATIONS OF Section 401 CERTIFICATION for GP/LOP-98-WI:

GENERAL CONDITIONS:

1. If any conditions of this certification are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
2. Activities must comply with all provisions and conditions of GP/LOP-98-WI.
3. This certification does not grant any authorization under Chapter 30 or 31 of the Wisconsin Statutes. However, any activity that is authorized by the State under Chapter 30 or 31 is automatically granted water quality certification. Please note that certain fills in "navigable waters of the State" are prohibited by State law and can not be authorized under Chapters 30 or 31. This certification does not apply to any such prohibited fills.
4. Applicants seeking authorization under these regional general permits (except the non-reporting general permit) and letters of permission shall complete form 3500-53 (Joint State/Federal Permit Application) and submit a copy to the appropriate local COE office and local WDNR Water Management Specialist. Applications for water quality certification must be complete as determined by the WDNR. Please note an application fee is required for State water quality certification activities identified under Section II below.

I. The WDNR grants water quality certification for the **Non-Reporting GP** subject to compliance with General Conditions 1., 2. and 3. above.

II. The WDNR grants water quality certification for projects under the **Provisional GP** and the **Provisional LOP** subject to the General Conditions above, and:

- A. Activities may not result in adverse impacts to fishery

spawning habitat or may not adversely affect avifauna breeding areas or substantially disrupt the movement of those species that normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

B. Activities may not be detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.

C. Activities, individually or cumulatively, may not be detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

D. The applicant must receive written confirmation from the WDNR that their proposed activity(s) is consistent with the requirements of NR 299 Water Quality Certification, Wis. Adm. Code.

E. The WDNR confirms in writing that the applicant has adequately demonstrated that no other practicable alternative exists which would not adversely impact wetlands and would not result in other significant adverse environmental consequences.

F. The WDNR confirms in writing that the activity is consistent with the requirements of NR 103.08, Wis. Adm. Code.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the normal processing time for confirming activities eligible for authorization under this certification may be extended (by written notice from WDNR to the applicant.)

III. The WDNR grants water quality certification for projects under the **Programmatic GP** subject to compliance with the General Conditions above.

29. Wisconsin Coastal Management Program (WCMP) Conditions. The WCMP's Federal consistency determination for GP/LOP-98-WI provides that no GP/LOP-98-WI authorization for an activity taking place in coastal wetlands identified as ridge and swale complexes and/or wetlands adjacent to the Mink River, Door County, and the Kakagon and Bad Rivers, Ashland County will be valid unless and until a Federal consistency determination is granted or waived by the WCMP. This requirement therefore is incorporated as a permit condition of GP/LOP-98-WI. Applicants will be notified of this condition in the District's GP or LOP provisional authorization for projects in these areas.